Remarks:

Regarding the Examiner's objection to the "preamble":

As discussed previously, the Federal Courts have held otherwise on plural occasions that terms in the claim's preamble may be given patentable weight. In *Catalina Mktg. Int'l v. Coolsavings.com, Inc.*, 289 F.3d at 808-09, 62 USPQ2d at 1785, the Court stated that "Clear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art transforms the preamble into a claim limitation because such reliance indicates use of the preamble to define, in part, the claimed invention. Without such reliance, however, a preamble generally is not limiting when the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention." Consequently, "preamble language merely extolling benefits or features of the claimed invention does not limit the claim scope without clear reliance on those benefits or features as patentably significant.". Similarly in *Poly-America LP v. GSE Lining Tech. Inc.*, 383 F.3d 1303, 1310, 72 USPQ2d 1685, 1689 (Fed. Cir. 2004), the Court stated that "a '[r]eview of the entirety of the '047 patent reveals that the preamble language relating to 'blown-film' does not state a purpose or an intended use of the invention, but rather discloses a fundamental characteristic of the claimed invention that is properly construed as a limitation of the claim.'"

Here in the applicant's claims, the terms "fragrance composition", and "a fragrance application" disclose key technical features, including organoleptic properties, of the subject matter of the claims and thus should be afforded patentable weight.

Support for the term "fragrance composition" is found in applicant's (published) specification, *inter alia*, at para. [0001]. The applicant asserts that the term "fragrance composition" is not a "preamble" limitation but directed to a composition of matter, which is tangible and that "fragrance" defines an indivisible characteristic of the term, and thus it cannot be interpreted as merely outlining an "intended use". Such a position finds tangible support for the definition of "fragrance composition" as being a

composition of matter, as applicant's specification recitation as possible the addition of other materials, e.g., "base material", other "odourant molecules", "carrier materials", and/or "other auxiliary agents commonly used in the art." Thereto; see para: [0022] – [0030], of applicant's published application.

Turning now to the Examiner's objection to our use of "fragrancing application", the applicant points out that It is well settled in the law that a patent application may be their own "lexicographer", *see* e.g., Autogiro Co. of America vs. U.S. 155 USPQ 697 (Ct.Cl., 1967) at pp 702, 707-708. Applicant's specification as published, provides clear support for the term "fragrancing application" e.g.,

> **[0034]** As used herein, "fragrance application" means any product, such as fine perfumery, e.g. perfume and eau de toilette; household products, e.g. detergents for dishwasher, surface cleaner; laundry products, e.g. softener, bleach, detergent; body care products, e.g. shampoo, shower gel; and cosmetics, e.g. deodorant, vanishing creme, comprising an odourant. This list of products is given by way of illustration and is not to be regarded as being in any way limiting.

In view of the foregoing, applicant suggests that the Examiner's objections are improper and should be withdrawn.

Regarding the "double-patenting" rejection of the claims in view of copending US Serial No. 10/572804:

The applicant traversed the 'double patenting' rejection of the instant application over US Ser.No. 10/572804, as being inappropriate and premature. As the latter application has not been allowed to grant, thus it is believed that the Examiner's issuance of this grounds of rejection is also premature as the final scope of the allowable claims have not been determined in that application, nor has the scope of allowable claims in the instant application been established. Thus, until such time it is believed that the basis of the 'double patenting' rejection of the instant application is premature. Additionally the

applicant points out that a "provisional" terminal disclaimer is unknown and is non-existent in the MPEP.

The Examiner is invited to reinstate this rejection at such later time that allowable claims have been indicated in the present application, if such allowable claims would be deemed overlapping in scope to those of any US Patent issued from US Ser.No.10/572804. The applicant points out that the Examiner at page 3 indicates that "Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822." Consonant with the remarks made above, no claims in the present application have been deeded to be allowable, and it is noted that no substantive examination of the claims has commenced in US Ser.No.10/572804. Thus is believed both premature, and inequitable to insist upon the entry of a Terminal Disclaimer at the present date which would unfairly compromise the applicant's potential interest in scope of patent protection in both of the currently co-pending applications. Upon indication of allowable subject matter in either application, the applicant will be in a better position to comply with the mandates of MPEP § 822.

Regarding the rejection of claims 1, 5-8 under 35 USC 1029b) in view of Abramov et al (Zhuranl Obshchei Khimii (1952), 22, 1450-1457) (hereinafter "Abramov"):
The applicant respectfully traverses the present rejection in view of the Abramov document; Abramov fails to indicate any organoleptic properties of his indicated compounds, or their utility as fragrancing materials.

Here in the applicant's claims, the terms "a fragrancing composition" and "a fragrance application" disclose key technical features, including organoleptic properties, of the subject matter of the claims and thus should be afforded patentable weight. Given such, they also not anticipated by Abramov, nor suggested by Abramov which is wholly silent as to any organoleptic properties of his compounds.

In view of the foregoing, reconsideration of the propriety of the outstanding grounds of rejection and indication of allowable subject matter in the presently amended claims is solicited.

PETITION FOR A ONE-MONTH EXTENSION OF TIME

The applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned representative would meaningfully advance the prosecution of this application towards allowance, the Examiner is invited to contact the undersigned at their earliest convenience.

Respectfully Submitted;

Andrew N. Parfomak

23 July 2008

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CERTIFICATE OF TELEFAX TRANSMISSION UNDER 37 CFR 1.8

I certify that this document, and any attachments thereto, addressed to the: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" is being telefax transmitted to (571) 273-8300 at the United States Patent and Trademark Office.

Andrew N. Parfomak — Date: 23 July 2008

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